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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 117

SNYDER VOGEL and SAM VOGEL,
Petitioners,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and TENNECO OIL COMPANY,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

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June, 1965

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In the
Supreme Court of the United States

OCTOBER TERM, 1964

No. 1140

SNYDER VOGEL and SAM VOGEL,
Petitioners,

VERSUS

THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA and TENNECO OIL COMPANY,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

Ferrill H. Rogers, on behalf of the Respondents, prays that the Petition for the Writ of Certiorari to review the decision of the Supreme Court of the State of Oklahoma in the above entitled case be denied.

OPINION BELOW

The opinion of the Supreme Court of the State of Oklahoma in No. 40525, dated February 9, 1965, is set out *infra* in the appendix hereto, pages i-v.

JURISDICTION

Jurisdiction of the Supreme Court of the United States has been involved by Petitioners pursuant to Title 28, U. S. Code, Section 2101, and Rule 19 of this Court.

QUESTIONS PRESENTED

The Petitioners broach three questions:

1. In this case, is it a deprivation of due process of law and a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution for a Judge to participate in and write the opinion (concurred in by five other Justices) in a case when said Justice is subsequently suspended and impeached by the Legislature for having taken bribes in other cases?

2. Is it a deprivation of due process of law and a denial of equal protection of the laws under the Fourteenth Amendment to the Federal Constitution and under a similar provision of the Constitution of the State of Oklahoma where the Oklahoma Constitution provides:

> "The Supreme Court's review of appealable orders of the Corporation Commission shall be judicial only, and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts.
>
> "In all other appeals from orders of the Corporation Commission the review of the Supreme Court shall not extend further than to determine * * * whether the findings and conclusions of the Commission are sustained by the law and substantial evidence,"

for the Oklahoma Supreme Couprt to apply a substantial evidence standard in sustaining a Corporation Commission Order, when the Petitioners contended that their constitutional rights have been denied because there is insufficient evidence in the record justifying the entry of an Order creating drilling and spacing units one mile wide east and west in view of the facts in this case?

3. Is the Order of the Oklahoma Corporation Commission such an unreasonable, arbitrary and discriminatory restriction on the use of private property as to be a deprivation of due process of law and a denial of equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Pertinent provisions of the Constitution of the United States are as follows:

Fourteenth Amendment, Section 1:

> "* * * Nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article II of the Constitution of the State of Oklahoma reads in pertinent part:

> "§ 23. *Private property—Taking or damaging for private use.*—No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner, except for private ways of necessity, or for drains and ditches across

lands of others for agricultural, mining, or sanitary purposes, in such manner as may be prescribed by law.

"§ 24. *Private property—Public use—Character of use a judicial question.*—Private property shall not be taken or damaged for public use without just compensation. Such compensation, irrespective of any benefit from any improvements proposed, shall be ascertained by a board of commissioners of not less than three freeholders, in such manner as may be prescribed by law. The commissioners shall not be appointed by any judge or court without reasonable notice having been served upon all parties in interest. The commissioners shall be selected from the regular jury list of names prepared and made as the Legislature shall provide. Any party aggrieved shall have the right of appeal, without bond, and trial by jury in a court of record. Until the compensation shall be paid to the owner, or into court for the owner, the property shall not be disturbed, or the proprietary rights of the owner divested. * * * When possession is taken of property condemned for any public use, the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of such compensation. The fee of land taken by common carriers for right of way, without the consent of the owner, shall remain in such owner subject only to the use for which it is taken. In all cases of condemnation of private property for public or private use, the determination of the character of the use shall be a judicial question."

Article IX, Section 20 of the Constitution of the State of Oklahoma reads in pertinent part:

"The Supreme Court's review of appealable orders of the Corporation Commission shall be judicial only,

and in all appeals involving an asserted violation of any right of the parties under the Constitution of the United States or the Constitution of the State of Oklahoma, the Court shall exercise its own independent judgment as to both the law and the facts.

"In all other appeals from orders of the Corporation Commission the review of the Supreme Court shall not extend further than to determine whether the Commission has regularly pursued its authority and entered findings and conclusions of the Commission which are sustained by the law and substantial evidence. Upon review, the Supreme Court shall enter judgment either affirming or reversing the order of the Commission appealed from."

Pertinent provisions of the statutes of the State of Oklahoma relating to power and authority of the Corporation Commission to establish well spacing and drilling units are:

Sec. 87.1(a), Title 52, O.S.A.:

"To prevent or to assist in preventing the various types of waste of oil or gas prohibited by statute, or any of said wastes or to protect or assist in protecting the correlative rights of interested parties, the Commission, upon a proper application and notice given as hereinafter provided, and after a hearing as provided in said notice, shall have the power to establish well spacing and drilling units of specified and approximately uniform size and shape covering any common source of supply, or prospective common source of supply, of oil or gas within the State of Oklahoma . . ."

Sec. 87.1(b), Title 52, O.S.A.:

"In establishing a well spacing or drilling unit for a common source of supply thereunder, the acreage

to be embraced within each unit and the shape thereof shall be determined by the Commission from evidence introduced at the hearing, . . .

"The order establishing such spacing or drilling units shall set forth: (1) the outside boundaries of the surface area included in such order; (2) the size, form, and shape of the spacing or drilling units so established; (3) the drilling pattern for the area; which shall be uniform; and (4) the location of the permitted well on each such spacing or drilling unit. To such order shall be attached a plat upon which shall be indicated the foregoing information . . ."

Sec. 86.3, Title 52, O.S.A.:

"The term 'waste,' as applied to gas, in addition to its ordinary meaning, shall include the inefficient or wasteful utilization of gas in the operation of oil wells drilled to and producing from a common source of supply, the inefficient or wasteful utilization of gas from gas wells drilled to and producing from a common source of supply; the production of gas in such quantities or in such manner as unreasonably to reduce reservoir pressure or unreasonably to diminish the quantity of oil or gas that might be recovered from a common source of supply; the escape, directly or indirectly, of gas from oil wells producing from a common source of supply into the open air in excess of the amount necessary in efficient drilling, completion or operation thereof; waste incident to the production of natural gas in excess of transportation and marketing facilities or reasonable market demand; the escape, blowing or releasing, directly or indirectly, into the open air, of gas from wells productive of gas only, drilled into any common source of supply, save only such as is necessary in the efficient drilling and com-

pletion thereof; and the unnecessary depletion or inefficient utilization of gas energy contained in a common source of supply . . ."

PRELIMINARY STATEMENT

The Tenneco Oil Company, Respondent herein, drilled its Sarkeys No. 1 Well in the SE/4 of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma (R., Ex. 9A).

That well encountered two separate common sources of supply of gas and gas condensate. The first such common source of supply is the Basal McLish Sand (R. 32). This sand is about 20 feet in thickness (R. 33). The estimated cost of drilling and completing a well to that common source of supply is $180,000.00 (R. 32).

The next common source of supply is the Oil Creek Sand (R. 32). This sand is approximately 60 feet in thickness (R. 33). It is estimated that the cost of drilling and completing a well to the Oil Creek Sand is approximately $200,000.00 (R. 33).

After drilling and completing the Sarkeys No. 1 Well, and after having gained the geological and engineering information resultant from such drilling and completion, already having information as to numerous other wells in the area, Tenneco Oil Company filed an application with the Commission and requested that all the S/2 of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma, be declared a drilling and spacing unit for each of the two beforementioned common sources of supply.

When the application came on for hearing before the Corporation Commission, Petitioners herein appeared and protested the granting of the application and protested the establishing of the drilling and spacing unit for each of the common sources of supply and asserted in connection with such objections that "this unit does not extend to underlay the SW/4 of Section 35. *We think it's a small unit which covers just the SE/4 . . .*" (Emphasis ours.)

After hearing the testimony involved in this particular hearing, as well as being fully familiar with the general area under consideration by reason of hearings held on applications for 320-acre drilling and spacing units for the Basal McLish Sand and the Oil Creek Sand common sources of supply underlying all of Section 1, Township 1 North, Range 9 East, adjoining the southeast corner of Section 35, described above, the Commission granted the application of Tenneco Oil Company. The Oklahoma Corporation Commission established a 320-acre drilling and spacing unit for the production of gas and gas condensate from each of the beforementioned common sources of supply, that is the Basal McLish Sand and the Oil Creek Sand. The unit so established comprises the S/2 of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma (R., Ex. 8).

The Court will please keep in mind that the Oklahoma Corporation Commission is a governmental body of specialized jurisdiction. The Commission and its staff are specialists in the field of oil and gas production and operation insofar as same relate and pertain to the protection of correlative rights and the prevention of waste. In reviewing

the facts upon which the Commission predicated the Order on appeal here, this Court will please remain ever cognizant of that premise so that the Court will not be prone to substitute its judgment for that of the Commission where interpretations of geological and engineering data are concerned.

ARGUMENT IN OPPOSITION TO GRANTING OF WRIT

Question 1

Petitioners assert that the opinion of the Oklahoma Supreme Court in the instant case deprives them of due process of law and denies them equal protection of the law because of Justice Johnson's participation in the case, and also because he wrote the opinion.

Petitioners' allegations with respect to Justice Johnson are true. The charges in each instance, as stated by Petitioners, arose out of the cases of *Selected Investments Corp.* v. *Oklahoma Tax Commission* and *Oklahoma Co.* v. *O'Neill.*

Atrocious as the acts of Justice Johnson might have been in those cases, we are not willing to spread the hateful cloud of guilt by association over the five other justices who participated in the majority opinion in the instant case.

To accept the argument of Petitioners would be to impeach and find guilty the remaining members of the Court. Were Justice Johnson sitting as a one-man appellate body in this case, then perhaps the arguments called forth might

have appeal, if not merit. However, to say that Justice Johnson's participation should vitiate the Court's opinion, is to say that not only was he corrupted in this case, but he also corrupted five of the six other justices who participated in the case. Petitioners cite, at page 12 of their Petition for Writ, the case of *Buchalter* v. *New York*, 319 U.S. 427 (1943). In that case the Court said, at page 431:

> "As we have recently said, it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality."

There is no alleged overt malfeasance on the part of Justice Johnson in this case. Demand is made that Petitioners be required to show a specific allegation of the occurrence of corruption in the case. They have tried to impute guilt through resort to indirect implication. Justice Johnson was charged with specific malfeasance in two specific cases, but not in this. Must every justice ever associated on the Supreme Court with Justice Johnson bear the stigma of his acts in two cases? Must every litigant, whose case has been affirmed by the Supreme Court while Johnson was on the bench be indirectly accused of bribing him?

It is of concern here as to whether the allegation of deprivation of due process and denial of equal protection is well founded. To bottom such an allegation on the sheer speculation, as have Petitioners, that Justice Johnson exercised prejudicial influence on the five remaining justices

who voted with him in this case is to indulge in fantasy. The Court composed of seven justices, acted in this matter and *not* one justice. The Court was competent under the laws of Oklahoma to act. The Petitioners, in their Petition for Writ at pages 11 and 12 cite a decision of this Court in the case of *Jordan* v. *Massachusetts*, 225 U.S. 167 (1912). In that case this Court said, at page 335:

> "But to say that due process is denied when a competent state court refuses to set aside the verdict of a jury because the sanity of one of its members was established by only a preponderance of evidence would be to enforce an exaction unknown to the precedents of the past, and an interference with the discretion and power of the state not justified by the demands of justice, nor recognized by any definition of due process."

In substance the Petitioners are claiming that Justice Johnson's presence and participation in this case has denied them of fair play on the Oklahoma Supreme Court and that his presence and participation precluded the majority of the Court from impartially reviewing the Order of the Corporation Commission which had been presented to it. If such is the case, the Respondents herein could likewise claim that Justice Johnson's presence and participation in the case destroyed the ideal system for the administration of justice which every State should have and enforce.

> "The due process clause does not impose upon the state a duty to establish ideal systems for the administration of justice, with every modern improvement and with provision against every possible hard-

ship that may befall." *Snyder* v. *Massachusetts*, 291 U.S. 97, 105 (1934).

Of course, a fair trial or a fair hearing is implicit within the term "due process of law." In order, however, to constitute a deprivation of due process of law, the denial of a right asserted must have so fatally infected the trial or the hearing that such a destruction, if any, of the Petitioners' rights ensured as to have violated the fundamental aspects of fairness and as to have resulted in a miscarriage of justice. The process of law clause required only that a party be accorded that degree of fundamental fairness essential to the very concept of justice. *Curran* v. *State of Del.*, D.C. Del. 1957, 154 F.Supp. 27, *affirmed* 259 F.2d 707, *certiorari denied* 79 S.Ct. 355, 358 U.S. 948, 3 L.Ed.2d 353.

The presence of the other justices on the Supreme Court of Oklahoma insured the Petitioners of the fairness required to assure them of proper due process of law. Without them there might be some credence to be placed in Petitioners' assertions. As the facts are, however, the assertions should be cast aside.

Questions 2 and 3

Questions 2 and 3 are so closely related that they will be discussed together.

Apparently, Petitioners would have this Court analyze every shred of evidence presented to the Oklahoma Corporation Commission and substitute its judgment on the conflicting testimony for the combined judgments of the Corporation Commission and the Oklahoma Supreme Court. Why

else would Petitioners resort in their Petition for Writ to such a detailed arguing of the evidence particularly when the entire record of the Corporation Commission proceedings have been submitted to this Court?

In *Railroad Commission of Texas* v. *Rowan & Nichols Oil Co.*, Tex. 1941, 61 S.Ct. 343, 311 U.S. 570, 85 L.Ed. 358 (See also, *Railroad Commission of Texas* v. *Humble Oil & Refining Co.*, 1941, 61 S.Ct. 347, 311 U.S. 578, 85 L.Ed. 363). The District Court enjoined as unreasonable the enforcement of an Order of the Texas Railroad Commission fixing and allocating allowables for the East Texas oil field. In striking down the action of the District Court as improper this Court pointed out that there is nothing in the Constitution to warrant a rejection of the Commission's expert conclusions, and "due process of law" within the Fourteenth Amendment does not require the judgment of the expert Commission to be supplanted by an independent review of judges on the conflicting testimony and prophesies and impressions of expert witnesses.

Also, in *Sun Oil Co.* v. *Burford*, C.C.S., Tex. 1941, 124 F.2d 467, *vacated* 130 F.2d 10, *reversed* 63 S.Ct. 1098, 319 U.S. 315, 87 L.Ed. 1424, *rehearing denied* 63 S.Ct. 1442 (2 cases) 320 U.S. 214, 87 L.Ed. 1951, this Court held that in the absence of a clear showing of confiscation or lack of due process of law, bodies like the Railroad Commission of Texas, which have attempted to work out a system for equitably controlling the production of gas and oil, should be left, at least by the Federal Courts to deal with the situation unless the Court of last resort of the State has de-

cided that an independent judgment with respect to reasonableness should be exercised by the Courts.

Petitioners want this Court to substitute its judgment for that of the Oklahoma Corporation Commission and for that of the Oklahoma Supreme Court on purely factual questions. It has always been the rule of law in Oklahoma and Oklahoma Supreme Court's interpretation of Oklahoma's constitutional provision (Article 9, Paragraph 20, Constitution of Oklahoma quoted above) that:

> "An order of state Corporation Commission must be lawful and supported by competent and substantial evidence to be sustained on appeal to Supreme Court, *whether appeal involves asserted violation of constitutional rights, so as to require Supreme Court to exercise its own independent judgment on both law and facts, or is in category of other appeals, wherein Const. art. 9 Sec. 20, limits court to determination of questions whether Commission regularly pursued its authority or whether its findings and conclusions are sustained by law and substantial evidence.*" (Emphasis added.)

Anderson-Prichard Oil Corp. v. *Corporation Commission*, 205 Okla. 672, 241 P.2d 363, *appeal dismissed* 72 S.Ct. 562, 342 U.S. 938, 96 L.Ed. 698.

This Court has recognized that the police power of the State extends to the regulation of the drilling of oil and gas wells, as provided in Oklahoma's drilling and spacing unit law (Sec. 87.1, *et seq.*, Title 52, O.S. 1961), and that the establishing of such drilling and spacing units for a conservation purpose does not violate provisions of the Okla-

homa and Federal Constitutions as taking property without just compensation or without due process of law.

Patterson v. *Stanolind Oil & Gas Co.*, 77 P.2d 83, 59 S.Ct. 259, 305 U.S. 376, 83 L.Ed. 231.

Petitioners, however, attempt to revive contentions against this exercise of the police power by asking whether the Corporation Commission's action in establishing the 320-acre drilling and spacing unit is such an unreasonable, arbitrary and discriminatory restriction on the use of private property as to be a deprivation of constitutional rights. The answer to this question, in light of the *Patterson* case cited above, is simply "no" provided, of course, the action of that Commission is supported by substantial evidence.

Petitioners imply that the Corporation Commission acted through will or caprice or in some despotic or absolute manner without reason and without purpose. They assert that the Supreme Court of Oklahoma condoned this arbitrariness and acted improperly when it stated in its opinion in this case:

> "The argument advanced by appellants in support of Proposition One is that there is a taking of appellants' property in violation of Sections 23 and 24 of Article 2 of the Constitution of Oklahoma and in violation of the 14th Amendment to the Constitution of the United States *because there is insufficient evidence 'in the record justifying the entry of the order creating drilling and spacing units one mile wide east and west in view of the facts in this case.' This quoted language is from the brief of appellants. The claimed violation of appellants' constitutional rights is therefore based upon the same contention advanced in Proposition Two,*

supra, namely, that the evidence is insufficient to justify the order entered." (Emphasis added.)

In this Court the Petitioners are asserting that the Oklahoma Supreme Court is incorrect in applying the "substantial evidence" standard.

The Petitioners in the Oklahoma Supreme Court, however, urged the approach that the said Supreme Court *apply* the substantial evidence rule in arriving at a decision.

> "We are fully aware of the basic law to the general effect that a Finding of Fact, supported by competent evidence, is *binding on this court.* We propose to assume the burden of proving that the Finding of Fact causing the Corporation Commission to fix such drilling and spacing units is not supported by competent evidence." (Petitioners Brief before Oklahoma Supreme Court, page 2; emphasis added.)

Then Petitioners, after analyzing the evidence presented before the Oklahoma Corporation Commission, in that brief, proceeded to "challenge the Order of the Corporation Commission as being in violation of their constitutional rights" and cited:

> —*Mee* v. *Corporation Commission* (Okla. 1956), 293 P.2d 593;
>
> *Anderson-Prichard Oil Corporation* v. *Corporation Commission* (cited above);
>
> *Carter Oil Co.* v. *State,* 240 P.2d 787,

with the conclusion that:

> "We have cited the cases above *to impress on this Court that it is its duty to examine the record in this*

case to determine if any substantial evidence is reflected which justifies the Commission in entering the order. If there is no substantial evidence in the Record then it is obvious that the inclusion of the SW 1/4 of Section 35 as a part of the drilling and spacing unit is an impingement on the rights of the Vogels and deprives them of their property rights because it results in a dilution of their royalty by approximately 40%." (Petitioners' Brief before Oklahoma Supreme Court, page 23; emphasis added.)

Thus, in the Oklahoma Supreme Court, below, the Petitioners urged that Court to apply the "substantial evidence" standard in determining the validity of the contentions there made. In this Court, Petitioners contend that the Oklahoma Supreme Court was wrong in applying the "substantial evidence" test in determining whether constitutional rights have been infringed. On which leg and in which Court do Petitioners intend to stand?

The United States Court will assume that a state statute capable of an interpretation effecting a constitutional result will be given that interpretation by the State Supreme Court charged with the duty of finally interpreting it. *National Fertilizer Ass'n* v. *Bradley*, D.C., S.C. 1936, 18 F.Supp. 263, *affirmed* 59 S.Ct. 748, 301 U.S. 178, 81 L.Ed. 990. This the Oklahoma Supreme Court has done in its construction of Oklahoma's constitutional provision having to do with review requirements with respect to Corporation Commission Orders.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

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June, 1965

APPENDIX

VOGEL ET AL.
v.
CORPORATION COMMISSION ET AL.

No. 40526. Feb. 9, 1965.

* * * * * * * * * *

JOHNSON, J. This is an appeal from an order of the Corporation Commission, creating one drilling and spacing unit consisting of the S-½ of Section 35, Township 2 North, Range 9 East, Coal County, Oklahoma. Such unit was created for the production of natural gas and condensate from the Basal McLish and Oil Creek Sands.

The plaintiffs in error submit two propositions for the vacation of the order as follows:

"Plaintiffs in error challenge the order of the Corporation Commission as being a violation of their Constitutional rights.

"There is no substantial evidence in the record authorizing the entry of the spacing order."

In Finding No. 5 the Commission made this statement, which summarizes the controversy:

"5. The principal dispute in this cause is whether or not the SW/4 of said Section 35 is underlain by productive Basal McLish and Oil Creek Sands; * * *"

After making a resumé of the testimony, the Commission made Finding No. 8 which is as follows:

"8. Taking into consideration all of the evidence, facts and circumstances in this cause, it would appear that some substantial portion of the SW/4 is underlain by these common sources of supply, and therefore an order should be made establishing the S/2 of Sec-

tion 35 as a drilling spacing unit for the Basal McLish Sand and for the Oil Creek Sand, and the Sarkeys No. 1 Well, located in the NW/4 of the SE/4 of the SE/4 of Section 35, should be the permitted well for said unit."

It is this finding to which objection is made.

The argument advanced by appellants in support of Proposition One is that there is a taking of appellants' property in violation of Sections 23 and 24 of Article 2 of the Constitution of Oklahoma and in violation of the 14th Amendment to the Constitution of the United States *because there is insufficient evidence "in the record justifying the entry of the order creating drilling and spacing units one mile wide east and west in view of the facts in this case." This quoted language is from the brief of appellants. The claimed violation of appellants' constitutional rights is therefore based upon the same contention advanced in Proposition Two, supra, namely, that the evidence is insufficient to justify the order entered.* (Emphasis added.)

We therefore proceed to a consideration of Proposition Two. *The entire objection to the order is that there is insufficient evidence to justify the inclusion of the SW/4 of Section 35,* and therefore the royalties of the plaintiffs in error would be reduced by approximately forty percent (Emphasis added.)

It is conceded by both parties that the rule is correctly stated in the case of Mee v. Corporation Commission, Okla., 293 P.2d 593, from which the following is quoted:

> *"The rule is well established that if an order of the Corporation Commission appealed from is found to be supported by substantial evidence, it will be affirmed by this Court.* The rule is clearly stated in Woody v. State Corporation Commission, Okla., 265 P.2d 1102,

1106, wherein it is stated in the body of the opinion: (Emphasis added.)

"'* * * In the orderly administration of law we must indulge the presumption that the Commission's order is just, reasonable and correct.

"'* * *

"'Our appellate jurisdiction, as applied to the case before us, is judicial only, and is limited to a consideration whether the Commission has legally pursued its authority, and whether its findings and conclusions are sustained by the law and substantial evidence * * *.'"

This controversy hinges upon the single question of whether there was substantial evidence to support the order entered. The plaintiffs in error contend that there is no substantial evidence to show that there was a probability of production under the SW/4 of Section 35. The precise contention is that the opinions of the Tenneco experts were based wholly upon seismic information which it said was "questionable," "not substantial" and "not persuasive." (Emphasis added.)

We do not deem it necessary to determine that seismic data of the character introduced is insufficient to sustain the order entered or does not constitute "substantial" evidence within the definition established by our previous opinions. In this case there was other evidence. (Emphasis added.)

We quote excerpts from the testimony of the geologist testifying for applicants. After stating that since production could, in his opinion, be had in the SW/4 of Section 35, he pinpointed the sources from which his opinion was formed, as follows:

[APPENDIX]

"Q. What evidence do you have that any part of the Southwest Quarter of Section 35 will be productive? A. It's based on seismic data in the area.

"Q. Is it based entirely on seismic information? A. We also have a knowledge of the producing trend that runs through this area. We are generally looking at a ridge running through the area and we feel that this ridge continues on slightly north of west from the Sarkeys Well in this same section.

"* * *

"Q. (By Mr. Walker) With respect to Exhibit 10, let me ask you what the information is comprised of? I don't even know myself. A. We have the well records of the wells we drilled; we have the logs and the scout tickets of the wells immediately northwest of this area; we also had the seismic records in this area.

"* * * .

"Q. On the Sarkeys Well you have a minus 7489. What is that? A. That's the top of the Oil Creek.

"Q. How did you arrive at the gas-water contact? A. That is based on information on the electric log.

"* * *

"Q. Does Exhibit 10 bear out that interpretation of the area? A. Yes, sir.

"Q. And based on that, the Southeast Quarter of Section 35 would be wholly underlain by each common source of supply involved which would contribute gas to the well involved? A. It wouldn't be wholly underlain but substantially, yes, sir.

"* * *"

We have been cited to no authority which holds that seismic data is not sufficient upon which to base an opinion

as to the productivity of an area. But if additional information is required, we are of the opinion and hold that the quoted testimony shows additional information upon which the opinion was based. (Emphasis added.)

The quoted evidence is sufficient to come within the rule set forth in Superior Oil Co. v. Oklahoma Corporation Commission, 206 Okl. 213, 242 P.2d 454, wherein we said in the body of the opinion:

> "We concede that the Corporation Commission has a wide discretion in the performance of its statutory duties. We cannot substitute our judgment on disputed questions of facts unless the findings of the commission are not as commanded by the Constitution, supported by the law, and substantial evidence."

See, also, Pannell v. Farmers Union Cooperative Gin Association of Sterling, 192 Okl. 652, 138 P.2d 817, Chicago R. I. & P. Ry. Co. v. Vogel, 195 Okl. 194, 156 P.2d 620; Yellow Transit Co. v. State, 198 Okl. 229, 178 P.2d 83; Cities Service Oil Co. v. Anglin, 204 Okl. 171, 228 P.2d 191; Anderson-Prichard Oil Corp. v. Corporation Commission, 205 Okl. 672, 241 P.2d 363; Application of Choctaw Exp. Co., 208 Okl. 107, 253 P.2d 822; and Application of Bennett, Okl., 353 P.2d 114.

The order of the Corporation Commission is affirmed.

HALLEY, C.J., JACKSON, V.C.J., and WILLIAMS, IRWIN, and BERRY, JJ., concur. BLACKBIRD, J., dissents.